

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JOAN LAKEY,

Appellant,

v.

DEPARTMENT OF SOCIAL AND HEALTH
SERVICES,

Respondent.

) Case No. SUSP-05-0001

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, BUSSE NUTLEY, Vice Chair, and GERALD L. MORGEN, Member. The hearing was held at Department of Social and Health Services in Yakima, Washington on January 10, 2006.

1.2 **Appearances.** Appellant Joan Lakey was present and represented herself *pro se*. Patricia Thompson, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a five-day suspension for neglect of duty, gross misconduct, and willful violation of published employing agency or department of personnel rules or regulations. Respondent alleges Appellant inappropriately lifted a disabled resident from his wheelchair to his bed without assistance.

II. FINDINGS OF FACT

2.1 Appellant is a permanent employee for Respondent Department of Social and Health Services. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on January 6, 2005.

2.2 Appellant began her employment as an Attendant Counselor 1 at Yakima Valley School on June 5, 1995. As an Attendant Counselor 1, Appellant cares for disabled individuals, many of whom are unable to verbally communicate. Appellant is assigned to cottage 401/402, and her scheduled work hours are from 6 a.m. to 2:30 p.m. Appellant works with two other attendant counselors; however, there is a shift transition from 6 a.m. to 6:30 a.m., when staff members from the graveyard shift are available to assist the day staff.

2.3 Appellant has not received any previous disciplinary actions.

2.4. Part of Appellant's duties include operating a two-person mechanical lift to transfer residents from a bed to a wheelchair. It is mandatory that two staff members work together when using the mechanical lift equipment at Yakima Valley College to ensure the safety of residents as well as staff. When Appellant arrived to work in cottage 402 on September 2, 2004, resident Kenny K. was sitting in his wheelchair, having been lifted from his bed by staff on the graveyard shift.

2.5 At approximately 6:40 a.m., Attendant Counselor 3 Marla Jacobs, who was bathing another resident, heard Appellant move the mechanical lift down a hallway toward Kenny K.'s room. At that time, Appellant and Ms. Jacobs were the only two attendant counselors in cottage 402. After Ms. Jacobs finished assisting the resident she was bathing, she went to Kenny K.'s room and

1 noticed he had been transferred from his wheelchair back to his bed. Ms. Jacobs then asked
2 Appellant if she had moved Kenny K. by herself, and Appellant replied that Melody Jones, an
3 attendant counselor from the graveyard shift, had helped her move Kenny K., prior to leaving her
4 shift, which ended at 6:30 a.m.

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6 2.6 Ms. Jones, however, presented a different version of events. Ms. Jones testified that during
7 the overlap in shifts on September 2, she briefly assisted Appellant with resident Shannon but at no
8 time assisted Appellant with the lift/transfer of Kenny K. Ms. Jones testified that she left the 402
9 side of the cottage and went to her locker on the 401 side, as she normally did prior to leaving her
10 shift, when attendant counselor Lance Ettenhoffer asked her to assist him with lifting resident Lupe,
11 who resides on the 401 side.

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13 2.7 Appellant was the only person working with Kenny K. at the time of the alleged incident.
14 Appellant does not dispute that Kenny K. was transferred back to his bed because his feeding tube
15 became dislodged. While Appellant claims Ms. Jones assisted her in performing Kenny K.'s
16 transfer, we find a preponderance of the credible evidence supports Appellant operated the two-
17 person mechanical lift and transferred Kenny K. from his wheelchair to his bed without the
18 assistance of another attendance counselor.

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20 2.8 Each resident at Yakima Valley School has a care plan, which is outlined in a Health
21 Service Order (HSO). Kenny K.'s HSO specifically indicated the requirement of using a
22 mechanical lift with a two-person assist for transfers to and from his wheelchair.

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24 2.9 Yakima Valley School's Policy/Procedure I.A.01, Reporting of Abuse/Neglect/Financial
25 Exploitation of Residents, defines neglect as "[a]n act or omission that demonstrates a serious
26 disregard of consequences of such a magnitude as to constitute a clear and present danger to the

1 vulnerable adult's health, welfare, or safety." Additionally, Policy/Procedure I.A.01.1, Treatment
2 of Residents, requires that employees "treat all individuals with dignity, kindness, respect, proper
3 care, and consideration at all times . . ."

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5 2.10 Paul Sugden was the Superintendent at Yakima Valley School at the time of the incident
6 involving Kenny K. Mr. Sugden reviewed all of the pertinent information, including the
7 investigation of the allegation and Appellant's positive work history. In determining the level of
8 discipline, Mr. Sugden concluded that Appellant's actions were so egregious that a five-day
9 suspension was warranted to impress upon Appellant the seriousness of her misconduct.

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11 2.11 Mr. Sugden then drafted a letter dated December 1, 2004, informing Appellant of his
12 decision to suspend her without pay for five calendar days for neglect of duty, gross misconduct,
13 and willful violation of published employing agency or department of personnel rules or regulations
14 for failing to follow Kenny K.'s HSO and inappropriately lifting him from his wheelchair to his bed
15 without assistance. Acting Superintendent Tammy Winegar signed the disciplinary letter on Mr.
16 Sugden's behalf because he was on leave at the time the letter was issued to Appellant. Mr. Sugden
17 subsequently retired; however, he discussed Appellant's misconduct with the Regional
18 Administrator for the Division of Developmental Disabilities, Paul Reynolds, prior to retiring, and
19 Mr. Reynolds served as the appointing authority in this matter.

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21 2.12 Mr. Reynolds also reviewed all pertinent information and agreed with Mr. Sugden's
22 assessment that misconduct occurred. Mr. Reynolds further considered the importance of treating
23 residents of Yakima Valley School with respect, courtesy and in a manner that ensures their safety,
24 and he concluded Appellant's actions were contrary to the school's mission. Therefore, Mr.
25 Reynolds felt the five-day suspension was warranted.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues the evidence clearly established that Appellant failed to follow the proper procedures for lifting a resident, as outlined in the resident's Health Services Orders (HSO). Respondent further argues that the testimony consistently supported that Appellant used the mechanical lift without the assistance of another attendant counselor and instead lifted resident Kenny K. by herself. Respondent asserts Appellant's actions endangered the resident, were prohibited by policies and procedures, and as a result misconduct occurred. Respondent argues that many residents are medically fragile, making it even more important to follow identified procedures and argues a five-day suspension is an appropriate level of discipline for such a serious violation.

3.2 Appellant asserts she did not transfer resident Kenny K. on her own and contends Ms. Jones assisted her with the transfer. Appellant further asserts there are discrepancies in the disciplinary letter and the statements provided by the other attendant counselors. Appellant asserts that none of the employee statements coincide and that the alleged time of the incident is incorrect. Appellant contends that Ms. Jones may have forgotten that she assisted Appellant with the transfer because such transfers are common at the shift change over. Appellant contends Ms. Jacobs's version of the events are not plausible because she failed to promptly report her suspicions.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.

4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence that Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

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2 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
3 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
4 of Social & Health Services, PAB No. D86-119 (1987).

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6 4.4 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
7 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant
8 misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's
9 interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

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11 4.5 Willful violation of published employing agency or institution or Personnel Resources
12 Board rules or regulations is established by facts showing the existence and publication of the rules
13 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
14 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

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16 4.6 The evidence clearly established that two staff members were required to work together
17 when operating a two-person mechanical lift to transfer a resident. The credible evidence further
18 supported that Appellant was the only attendant counselor working with resident Kenny K. when he
19 was transferred from his wheelchair back to his bed. Appellant did not provide any credible
20 evidence to support her contention that there were discrepancies in her co-workers' statements.
21 Appellant had a duty to comply with requirements regarding mechanical lifts, and her failure to do
22 so constituted a neglect of her duty and violation of policy. Furthermore, Appellant's actions
23 jeopardized the safety of resident Kenny K. and, therefore, rose to the level of gross misconduct.

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25 4.7 Under the facts and circumstances, Respondent has proven the charges outlined in the
26 disciplinary letter, and the appeal should be denied.

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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Joan Lakey is denied.

DATED this _____ day of _____, 2006.

WASHINGTON STATE PERSONNEL APPEALS BOARD

Busse Nutley, Vice Chair

Gerald L. Morgen, Member